No. 83-859

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1983

PEOPLE OF THE STATE OF CALIFORNIA,

Petitioner,

vs.

CHARLES R. CARNEY,

Respondent,

On Writ of Certiorari to the
Supreme Court of California

BRIEF OF THE CALIFORNIA STATE PUBLIC DEFENDER AS AMICUS CURIAE IN SUPPORT OF RESPONDENT

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INTEREST OF AMICUS CURIAE AND CONSENT

The State Public Defender of California is an agency of the California state government which is charged with the representation on appeal of indigent criminal defendants. The agency is empowered by statute to appear

". . . as a friend of the court . . .", California Government Code section 15423, and it appeared as amicus curiae in the California Supreme Court. The outcome of the instant case will have a substantial impact upon the rights of persons represented by this office, as well as the public as a whole, to be free of routine warrantless searches of parked motor homes. Accordingly, the State Public Defender of California is filing this brief amicus curiae in support of respondent.

This brief is filed pursuant to rule 36 of the Rules of the Supreme Court of the United States. Consent to the filing of this brief has been given by counsel for petitioner and respondent. A written consent form, signed by counsel for the parties, accompanies this brief.

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SUMMARY OF ARGUMENT

At issue in this case is the propriety of the warrantless search of a parked motor home which had its curtains drawn. The police had the motor home under surveillance for over an hour and half yet made no effort whatever to obtain a warrant to search it for evidence of criminal activity, despite the fact that the motor home was located in a downtown metropolitan area close to a courthouse, and despite the fact that California authorizes telephonic warrants. See California Penal Code sections 1526(b) and 1528(b); People v. Ramos, 30 Cal.3d 553, 574, 639 P.2d 908, 180 Cal.Rptr. 266 (1982), reversed on other grounds; California v. Ramos, _____ U.S. _____, 77 L.Ed.2d 1171 (1983); People v. Morrongiello, 145 Cal.App.3d 1,

9, 193 Cal.Rptr. 195 (1983); Bowyer v. Superior Court, 37 Cal.App.3d 151, 162-164, 112 Cal.Rptr. 226 (1974). Petitioner seeks to justify the search on the ground that the motor home was a potentially mobile vehicle and as such fell within the automobile exception to the warrant requirement which applies to any vehicle which might be moved. Amicus submits that this approach, which focuses solely on mobility, completely ignores "the touchstone of [Fourth] Amendment analysis [which] has been the question whether a person has a 'constitutionally protected reasonable exception of privacy.' [Citation]" Oliver v. United States, _____U.S. _____, 80 L.Ed2d 214, 223 (1984). It also ignores the facts of this case, which show that the motor home was parked and had its curtains drawn.

Amicus submits that when a person purchases a motor home which has a fully self-contained living compartment furnished similarly to an ordinary home, he or she enjoys a reasonable expectation that the motor home, while parked with its curtains drawn, will be treated as a home and the police will not search it without a warrant unless exigent circumstances require an immediate search.[1/] In such a situation the motor home functions as a home, and those located inside it are likely to be engaged in activities of a private, personal or even intimate nature. This is particularly true in light of the fact that motor homes are

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1. Since this case deals with a motor home in its role as a home (parked, curtains drawn), the case is not affected by considerations which might pertain to motor homes in their roles as vehicles, such as a stop of a traveling motor home.

frequently used as temporary retreats by vacationers and retirees.

The Constitution should protect parked motor homes to the extent of requiring the police to obtain a warrant in the absence of exigency.

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ARGUMENT

THE AUTOMOBILE EXCEPTION TO THE WARRANT REQUIREMENT OF THE FOURTH AMENDMENT DOES NOT INVARIABLY APPLY TO A MOTOR HOME

A. Introduction

A motor home such as the one involved here is a hybrid-part home, part automobile. The court has traditionally drawn a distinction between automobiles and homes in relation to the Fourth Amendment and has upheld searches of automobiles in circumstances which would not justify a search of a home. South Dakota v. Opperman, 428 U.S. 364, 367 (1976). In the instant case, the Court is called upon to determine whether the facts of this case fall on the home or the automobile side of the distinction, or whether a new category should be created for motor homes. Amicus discusses in this brief several factors

to aid the Court in this task, First, this brief contains a discussion of principles of Fourth Amendment jurisprudence and case law as they relate to searches of homes and automobiles. Next, amicus discusses whether the motor home in this case, which was parked and had its curtains drawn, when viewed in terms of a applicable constitutional considerations, is more appropriately governed by the case law involving homes or automobiles.

B. Principles of Fourth Amendment Jurisprudence

The Fourth Amendment provides:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

The ultimate standard set forth in the Fourth Amendment is reasonableness. In construing the Fourth Amendment, there has long been agreement that "except in certain carefully defined classes of cases, a search of private property without proper consent is 'unreasonable' unless it has been authorized by a valid search warrant." Camara v. Municipal Court, 387 U.S. 523, 528-529 (1967). "The exceptions to the warrant requirement are 'jealously and carefully drawn," and there must be a 'showing by those who seek exemption . . . that the exigencies of the situation made that course imperative." Coolidge v. New Hampshire, 403 U.S. 443, 455 (1971), footnotes omitted. Moreover, the scope of the search must be strictly tied to and justified by the circumstances which ren-

dered its initiation permissible. Terry v. Ohio, 392 U.S. 1, 19 (1968).

In Oliver v. United States, supra, 80 L.Ed.2d at 223, this Court recently reaffirmed that "[s]ince Katz v. United States, 389 U.S. 347 (1967) the touchstone of [Fourth] Amendment analysis has been the question whether a person has a the 'constitutionally protected reasonable expectation of privacy.' Citation. The Amendment does not protect the merely subjective expectation of privacy, but only 'those expectations that society is prepared to recognize as "reasonable."' Citation." See also Smith v. Maryland, 442 U.S. 736, 739 (1979) (holding that the expectation of privacy

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must be "justifiable," "reasonable," or "legitimate").

These principles of Fourth Amendment jurisprudence have recently been applied, along with historical and practical considerations, to searches of homes and automobiles.

C. Fourth Amendment Principles Relating to Searches of homes

Searches of homes are afforded the greatest protection under the Fourth Amendment. It is an established principle that the "physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed . . . "United States District Court, 407 U.S. 297, 313 (1972). Indeed, the concern for protecting the home long predates the Fourth Amendment and has its roots in English common law. Payton v. New York, 445 U.S. 573, 591-598 (1980);

see also, People v. Eatman, 405 Ill. 491, 498, 91 N.E.2d 387, 390 (1950) (tracing the concern for the home past Lord Coke and to the Pandects). The Court has thus recognized as a basic principle of Fourth Amendment law that searches and seizures inside a home without a warrant are presumptively unreasonable. Payton v. New York, supra, 445, U.S. at 586; Steagald v. United States, 451 U.S. 204, 211-212 (1981); Coolidge v. New Hampshire, supra, 403 U.S. at 474-475.

And the Court has pointed out: "The Fourth Amendment protects the individual's privacy in a variety of settings. In none is the zone of privacy more clearly defined than when bounded by the unambiguous physical dimensions of an individual's home -- a zone that finds its roots in clear and specific constitutional terms: 'The right of the people

to be secure in their . . . homes . . . shall not be violated.' Payton v. New York, supra, 445 U.S. at 589. "At the very core [of the Fourth Amendment] stands the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion." Silverman v. United States, 365 U.S. 505, 511 (1961). The protection against warrantless searches afforded to homes is not subject to question, having been recently reaffirmed by this Court in Welsh v. Wisconsin, ____ U.S.____, 52 U.S.L.W. 4581 (1984). One's expectation of privacy in one's home is, in short, an expectation that society has long recognized as reasonable.

The expectation of privacy which one enjoys in one's home does not apply solely to one's permanent residence. It applies as well to temporary residences

such as a hotel, Stoner v. California, 376 U.S. 483, 489-490 (1964), and cases cited, and a rooming house, McDonald v. United States, 335 U.S. 451 (1948). Since a parked motor home can function as a temporary residence no less than a hotel does, it too should be entitled to the protections afforded homes, as will be demonstrated later in this brief.

D. Fourth Amendment Principles Relating to Searches of Automobiles

As we have seen, homes, even temporary ones, are entitled to the greatest protection against warrantless searches. While automobiles are "effects" and therefore within the reach of the Fourth Amendment, there is a constitutional difference between houses and cars. Cady v. Dombroski, 413 U.S. 433, 439 (1973). Thus, warrantless examinations of automo-

biles have been upheld in circumstances in which a search of a home or office would not. South Dakota v. Opperman, supra, 428 U.S. at 367; Chambers v. Maroney, 399 U.S. 42, 48 (1970).

The rationale behind both the automobile exception and distinction between homes and automobiles is twofold. First, the inherent mobility of automobiles ordinarily creates circumstances of such exigency that, as a practical necessity, rigorous enforcement of the warrant requirement is impossible. Carrol v. United States, 267 U.S. 132 (1925); Coolidge v. New Hampshire, supra, 403 U.S. at 459-460.

Although traditionally the mobility justification was the primary factor underlying the automobile exception, recent decisions from this Court, upholding warrantless automobile searches

in situations where no immediate danger was presented that the car would be removed from the jurisdiction, indicate that there is no requirement of actual or eminent mobility. In Cady v. Dombroski, supra, a warrantless search of an automobile was upheld even though the car was disabled as a result of an accident, in control of the police, and the driver, the sole occupant, had been arrested and hospitalized. Similarly, in Chambers v. Maroney, supra, all occupants of the car had been arrested and the car taken to the police station. Yet, the warrantless search was upheld. In Cooper v. California, 386 U.S. 58 (1967), the warrantless search was upheld even though the occupant had been arrested and the car impounded. Finally, the Court has recently upheld the warrantless searches of cars which had been impounded.

Florida v. Meyers, ____U.S. ____ (1984) (per curiam); Michigan v. Thomas, 458 U.S. 259 (1982). In short, when one looks to the mobility favor, it appears that warrantless searches of vehicles will be upheld even if the possibility of the vehicle being removed is "remote, if not non-existent." Cady v. Dombrowski, supra, 413 U.S. at 441-442.

But this court's treatment of automobiles "has been based [only] in part on their inherent mobility." United States v. Chadwick, 433 U.S. 1, 12 (1977). As noted earlier in this brief, the touchstone of Fourth Amendment jurisprudence is whether a person has a constitutionally protected reasonable expectation of privacy in the place searched. Oliver v. United States, supra, 80 L.Ed2d at 223. This principle has been applied to automobile searches,

and the Court has found that it is the diminished expectation of privacy surrounding the automobile which also justifys the automobile exception. (United States v. Chadwick, supra, 433 U.S. at 12.

A variety of factors diminish the expectation of privacy for automobiles. Automobiles, unlike homes, are subjected to periodic inspection and licensing requirements and, as part of what this Court termed the "community caretaking function," vehicles are frequently taken into police custody for traffic control or excessive parking violations. Cady v. Dombrowski, supra, 413 U.S. at 441; South Dakota v. Opperman, supra, 428 U.S. at 368-369. The expectation of privacy as to automobiles is further diminished by the obviously public nature of automobile travel.

"One has a lesser expectation of privacy in a motor vehicle its function is transportation and it seldom serves as one's residence or as a respository of personal effects. . . It travels public thoroughfares where both its occupants and its contents are in plain view." Cardwell v. Lewis, supra, 417 U.S. at 590.

In light of these factors it would not be objectively reasonable for a person who purchases an automobile to believe that the police will treat it as they would a home. But this case does not concern a simple automobile. A motor home is a hybrid which combines aspects of both homes and automobiles. Therefore, motor homes are not governed by the rules pertaining to automobiles.

E. Application of Fourth Amendment Principles to Motor Homes

To recapitulate, this case presents a hybrid. A motor home has the mobility of an automobile combined with the residential characteristics and pri-

vacy expectations of a home. The question is whether, for purposes of the Fourth Amendment, motor homes should, to some extent, be given the protection afforded homes or whether as petitioner has done, the court should ignore the high expectation of privacy in the motor home and treat it as if it were nothing more than an ordinary automobile. Amicus suggests that most of the factors which dilute the expectation of privacy in automobiles are inapplicable to motor homes, and that the expectation of privacy in a parked motor home is equivalent to that for a home.

Undeniably, motor homes are as inherently mobile as an ordinary automobile. However, even for the automobile exception when inherent, as opposed to actual, mobility is urged as a justification for a warrantless search, its true

basis is the reduced expectation of privacy which applies to a mere automobile. United States v. Chadwick, supra, 433 U.S. at 12. Indeed, "[t]he word 'automobile' is not a talisman in whose presence the Fourth Amendment fades away and disappears." Coolidge v. New Hampshire, supra, 403 U.S. at 461. "[T]he exercise of a desire to be mobile does not, of course, waive one's right to be free of unreasonable governmental intrusion." Cardwell v. Lewis, supra,417 U.S. at 591.

A person has a greater reasonably objective expectation of privacy in a motor home than in a typical automobile. Ordinarily a motor home serves a function above that of merely providing transportation. The motor home often serves as a permanent or temporary residence. The motor home can be permanently placed in a

mobile home park which makes it even more consistent with a home. Even if the motor home is for temporary residential use, such as on a vacation trip, the motor home serves the same function as a hotel or motel. This court has repeatedly stated that a person who utilizes a hotel or motel has a constitutionally protected right to be free of warrantless intrusion even though he or she does not own the premises or reside there permanently. Stoner v. California, supra, 376 U.S. at 489-490; United States v. Jeffers, 342 U.S. 42 (1951); Lustig v. United States, 338 U.S. 74 (1949). There is no legitimate reason why a person traveling in a motor home should be denied the same protection merely because he or she chose to utilize a motor home instead of a hotel or motel. Indeed, a motor home is more like a home

than a motel or hotel since it is owned by its occupant, it is a permanent repository of personal effects and persons such as maids and managers have no access to it.

Amicus notes that even the most frail home "is absolutely entitled to the same guarantees of privacy as the most majestic mansion." United States v. Ross, 456 U.S. 798, 822 (1982)

In keeping with this principle, the guarantee of privacy in a home should not be reduced simply because the home is temporary or is potentially mobile.

Motor homes also serve as a repository for personal effects apart from that contained in an ordinary automobile. Motor homes are equipped with beds, refrigerators, toilet facilities and receptacles for clothing and other personal items. Furthermore, motor homes

are normally not open to public view as with most automobiles. Motor homes are equipped with either small or tinted windows, shades or drapes which prevent exposure of the occupants and personal effects as well as precluding anyone from seeing inside.

Moreover, although they could be used for such daily activities as driving to and from work, shopping and other errands for which one would use a regular automobile, motor homes are not ordinarily used for such purposes. And when they are used for such purposes, it is often incidental to their use as a residence such as stopping in a town to purchase food or sundries or to do laundry.

While motor homes, like automobiles, are subject to periodic inspection and to licensing requirements, this does

not ordinarily extend to an invasion of the living quarters of the motor home, and does not greatly reduce the expectation of privacy in the motor home. And, as has been shown, while an automobile "seldom serves as one's residence or as a repository of personal effects," (Cardwell v. Lewis, supra, 417 U.S. at 590) motor homes ordinarily serve such functions, indeed, they are designed and purchased in order to serve such functions.

This court has consistently held that the application of the Fourth Amendment depends on whether the person invoking its protection can claim a "justifiable," a "reasonable" or a "legitimate expectation of privacy" that had been invaded by the government action. Smith v. Maryland, supra, 442 U.S. at 740; Rakas v. Illinois, 439 U.S.

128, 143. The inquiry, as Justice Harlan noted in his concurring opinion in Katz v. United States, 389 U.S. 347, 361 (1964), and as the court reiterated in Smith v. Maryland, supra, 442 U.S. at 740, normally embraces two discrete questions. "The first is whether the individual, by his conduct, has 'exhibited an actual (subjective) expectation of privacy,' [Citation], whether, in the words of the Katz majority, the individual has shown that 'he seeks to preserve [something] as private." The second question is whether the individual's subjective expectation of privacy is "one that society is prepared to recognize as 'reasonable,'" [Citation] Smith v. Maryland, 442 U.S. at 740.

> "No single factor determines whether an individual legitimately may claim under the Fourth Amendment that a place should be free of government intrusion not

> authorized by a warrant. Citations. In assessing the degree to which a search infringes upon individual privacy, the court has given weight to such factors as the intention of the framers of the Fourth Amendment, e.g., United States v. Chadwick, 433 U.S. -1, 7-8 (1977), the uses to which the individual has put a location, e.g., Jones v. United States, 362 U.S. 257, 265 (1960), and our societal understanding that certain areas deserve the most scrupulous protection from government invasion, e.g., Payton v. New York, 445 U.S. 573 (1980)." Oliver v. United States, supra, 80 L.Ed2d at 223-224.

By analyzing these factors in the instant case, this Court should conclude that respondent had a legitimate and reasonable expectation of privacy in the motor home.

Respondent's motor home was parked on a lot with closed curtains including one across the front window and remained in this condition for over an hour and a half. Under these circumstances, respondent most assuedly sought to prevent any exposure or

invasion of privacy from outside.

This expectation of privacy is also one which society already recognizes. Our society uses a large number of motor homes, not only for traveling but for permanent or temporary living quarters as well. While an automobile "seldom serves as one's residence or as a repository of personal effects," (Cardwell v. Lewis, supra, 417 U.S. at 590) a motor home, as its name implys, usually does. Indeed, it serves a residential purpose, at least temporarily, when one parks it and closes the curtains.

The fact that the motor home in this case was not parked at motor park or campground is of little constitutional significance. Just as one can go to one's house for an hour and a half to eat lunch and to take a nap, one can do the

same thing by parking it on a street or in a parking lot.

Society as a whole recognizes that motor homes function as homes. Our nation has numerous motor home parks as well as established motor home communities where our citizens place their homes permanently and temporarily. Furthermore, motor homes have traditionally been residences for vacationers, retirees or elderly persons. This is so because one can live in a motor home on a modest income. If this court treats motor homes as mere automobiles, it would do little, if nothing, to honor the privacy expectations of a large segment of our society.

Petitioner correctly notes that some courts have included motor homes within the automobile exception. See Petition for Writ of Certiorari 16-17,

24-25. A review of those cases shows no appreciation of the residential functions which motor homes serve, the personal, private and intimate activities which occur inside parked motor homes, or the importance of a citizen's reasonable expectation of privacy when purchasing and using a motor home. In contrast, courts which have appreciated these factors, and have considered them against the rationales for the automobile exception, have ruled that it is the expectation of privacy which prevails. United States v. Wiga, 662 F.2d 1325, 1329 (9th Cir. 1981), cert. denied, 449 U.S. 918 (1982); United States v. Williams 630 F.2d 1322, 1326 (9th Cir.), cert. denied, 449 U.S. 865 (1980); People v. Carney, 34 Cal.3d 597, 603-610, 668 P.2d 807, 194 Cal.Rptr. 500 (1983).

In summary, a motor home is more consistent with the uses of a private residence while an automobile is not. A parked motor home with its curtains drawn should be protected from warrantless searches and seizures at least to the extent of requiring officers to obtain a warrant prior to searching the motor home.

It should also be noted that requiring stringent warrant requirements for motor homes poses no greater burden or confusion for police officers than that created by the line of cases which discuss the extent to which the police may search an ordinary automobile.[2/]

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2. Even if law enforcement could be made more efficient if officers were not required to obtain a warrant, that fact does not justify abrogation of the warrant requirement. [T]he privacy of a person's home and property may not be

Motor homes are easily distuishable from a typical automobile. Though they are mobile, if officers have probable cause to believe illegal activity is being conducted inside, they can conduct surveillance of the motor home until a warrant is issued. For instance in this case, the police had previously received information that illegal activities were being conducted in respondent's motor home, and the police kept respondent's motor home under surveillance for over an hour and a half. It would have required little effort for the police to have obtained a warrant in person from a magistrate or to have utilized California's telephonic warrant procedure. See p. 2 of this brief, supra.

(footnote 2 continued)
totally sacrificed in the name of maximum simplicity in enforcement of the criminal law." Mincey v. Arizona,

Amicus recognizes that this Court has recently attempted, where feasible, to provide rules in the Fourth Amendment context which are easily understood and applied by the police. See, e.g., New York v. Belton, 453 U.S. 454, 458 (1981). Consistent with this approach, the position taken in this brief provides easily understood guidelines. This Court also recognizes that the privacy of a person's home and property are not to be totally sacrificed in the name of maximum simplicity in enforcement or the criminal law. Mincey v. Arizona, supra 437 U.S. 394. Requiring the police to attempt to obtain a warrant before searching a parked motor home is a rule which furthers both goals.

A true motor home--one purchased and used in the reasonable expectation that it will be treated as a home when it

is serving that function either permanently, or temporarily--is easily identifiable as such. Just as the police can distinguish a sedan from a station wagon, they can and do distinguish motor homes from mere automobiles when, for example, broadcasting descriptions of stolen or suspect vehicles. Indeed, police constantly make such distinctions when enforcing the California Vehicle Code. For example, while sections 23221 and 22223 of that code prohibit the drinking of alcoholic beverages or the possession of an open container of an alcoholic beverage in motor vehicle, section 23229(a) expressly exempts "the living quarters of a housecar or camper." Petitioner seriously underestimates the abilities of the police when he suggests that police officers are incapable of making distinctions which they in fact

routinely make in their work. See Petition for Writ of Certiorari 28-29.

There is no problem in identifying large motor homes, such as a 30 foot Pace Arrow or Winnebago. External features reasonably identify smaller motor homes. See People v. Carney, supra, 34 Cal.3d at 607.

The position taken in this brief provides necessary guidance for the police. Once they observe external features which identify the vehicle as a motor home and see that it is parked, they must attempt to obtain a warrant, either personally or telephonically, before searching it. If something arises which makes the obtaining of a warrant unfeasible--such as a true exigency or actual or imminent movement--they may treat the motor home as an automobile.

The rule here advanced, in short, adequately serves all pertinent constitutional and societal vaues. It respects the great expectation of privacy which pertains to temporary and permanent residences, which include motor homes. It appreciates the distinction between motor homes and automobiles, it is easy to apply since it involves a distinction which police routinely make when describing stolen or suspect vehicles. It is a rule which permits the police to dispense with the warrant requirement when it appears necessary to do so.

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CONCLUSION

Motor homes serve as temporary and permanent homes for a large number of citizens, including vacationers and retirees. Persons buying motor homes do so in the objectively reasonable expectation that they will use motor homes as a temporary or permanent residence and will engage in personal, private and intimate activities in their motor homes.

Police should be required to make some effort to honor the privacy expectations of the occupants of parked motor homes by making an attempt to obtain a search warrant, either personally or telephonically, Accordingly,

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we submit that the judgment of the California Supreme Court should be affirmed.

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Respectfully submitted,

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June 29, 1984